

***SECTION 26 - DENSITY BONUSES**

26.1 APPLICABILITY:

The granting of a density bonus for residential development and a development incentive within the City of Belmont is subject to the standards and process set forth in this Chapter, and shall apply to housing developments of five or more units.

26.2 PURPOSES:

The purpose of this Chapter is to: increase the supply of housing units for lower and very low income households and, senior and disabled households who are most in need of housing, by offering a density bonus and other incentive(s) to developers of new residential developments that include housing units for lower and very low, senior or disabled households, as specified herein; to implement the State Density Bonus Law (Government Code Sections 65915 and 65917); and to implement the Housing Element of the City of Belmont General Plan.

26.3 INTERPRETATION OF THE DENSITY BONUS ORDINANCE:

- (a) All standards set forth in this Chapter shall be construed as minimums.
- (b) If conflicts between provisions occur, the more restrictive provision shall govern.
- (c) All projects within the Redevelopment Agency boundary approved pursuant to this section must comply with California Redevelopment Law requirements that 15% of all units included within the project be affordable to low or moderate income households.

26.4 DEFINITIONS:

For purposes of this Chapter, the following definitions pertain.

- (a) **Additional Developer Incentive.** An additional developer incentive, which is offered a developer in addition to the required 25 percent density bonus. Additional developer incentives include both financial and site development (non-financial) incentives.
- (b) **Density Bonus Unit.** A density bonus unit is defined as a dwelling unit within a residential development, which has been granted to the developer in exchange for having met the requirements of this Chapter.
- (c) **Disabled Household.** A disabled household is defined as a household with at least one person who has a physical or mental impairment that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

* Section 26 was added by Ord. #861, 6/11/92

- (d) **Financial Incentive.** Financial incentives, direct or indirect, are incentives offered a developer in addition to the required 25 percent density bonus. Indirect financial incentives include but are not limited to the waiver of permit fees or the use of redevelopment powers. Direct financial incentives includes subsidizing infrastructure or land or construction costs.
- (e) **In-lieu Financial Incentive.** An in-lieu financial incentive is a financial incentive that may, by the option of the City, be offered a developer in lieu of the required 25 percent density bonus. The in-lieu financial incentive shall be based upon the land cost per dwelling unit of the units that would have constituted the density bonus.
- (f) **Lower Income Household.** A lower income household is defined as a household whose income, with adjustments for household size, does not exceed the qualifying limits for lower income households as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended.
- (g) **Qualifying Unit.** A qualifying unit is defined as a dwelling unit included in a residential development which enables the developer to qualify for a density bonus and incentive, as required by this Chapter. Qualifying units include: (1) unit reserved for occupancy by lower or very low income, senior, or disabled households.
- (h) **Senior Household.** In residential developments with less than 150 units, a senior household is defined as a household with at least one person who is 62 years of age or older. In residential developments with 150 units or more the threshold age defining senior is 55 years of age.
- (i) **Site Development Incentive.** A site development incentive is an additional developer incentive that is not financial in nature. Site development incentives involve waiving or modifying the zoning code requirement or site development standards particular to development of the site in addition to the requested 25 percent density bonus. Site development incentives are listed in Section 26.2. of this chapter and include modification of site development standards such as minimum open space, lot size and parking requirements or the modification of the amount of public improvements such as minimum street width, or the provision of sidewalks, curb, and gutters.
- (j) **Very Low Income Household.** A very low income household is defined as a household whose income, with adjustments for household size, does not exceed the qualifying limits for very low income households as established by and amended from time to time by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended.

26.5. REQUIREMENTS TO QUALIFY FOR A 25 PERCENT DENSITY BONUS AND ADDITIONAL INCENTIVE

1. Requirements

In addition to the maximum density of residential development allowed by the General Plan and zoning on a given parcel the City shall grant either, (1) a 25 percent density bonus and at least one additional incentive provided that the need for the additional incentive is supported by the appropriate documentation as required in Section 26.9 of this Chapter; or, (2) or an in-lieu financial incentive of equivalent financial value based upon the land cost per dwelling unit of the units that would constitute the density bonus when one of the following requirements are met:

- A. Ten (10) percent of the total units will be constructed for very low income households, as defined in Section 26.4(j).
- B. Twenty (20) percent of the total units will be constructed for lower income households, as defined in Section 26.4(f); or
- C. Fifty (50) percent of the total units will be constructed for senior or disabled households, as defined in Section 26.4(c) and (h).

2. Additional Developer Incentives

The developer incentives offered in addition to a density bonus of 25 percent are as follows:

A. Site Development Incentives

- 1. Modification of zoning code or site development requirements (e.g., minimum open space, minimum lot size, setbacks, parking standards); or,
- 2. Modification of the amount or location of public improvements (e.g., street widths, sidewalks, or curbs and gutters; or,

B. Financial Incentives

- 1. Allowance of other regulatory incentives or measures, which can be shown to result in construction cost reductions, without compromising public policy (e.g., waiver of permit fees or use of monetary contribution such as from the low/moderate income housing fund).

C. In-lieu Financial Incentive

- 1. The City Council may find that an in-lieu financial incentive shall be offered the Developer in place of a density bonus based upon the equivalent per unit value of the dwelling units that would have constituted the density bonus. Such incentives can be direct funds or indirect such as waived fees, e.g., park in-lieu fees.

26.6. METHOD OF CALCULATING THE NUMBER OF QUALIFYING AND DENSITY BONUS UNITS

1. Density bonus units shall not be counted when determining the number of qualifying units in a residential development.
2. When calculating the number of qualifying units in a residential development any decimal fraction less than 0.50 may be disregarded, and any decimal fraction greater than or equal to 0.50 shall be construed as one dwelling unit.
3. When calculating the number of density bonus units to be granted in cases that statistical rounding results in a bonus or less than the required 25 percent any decimal fraction less than 0.50 shall be rounded to the next highest whole number in order to ensure the 25 percent density bonus requirement is met.

26.7. STANDARDS FOR QUALIFYING UNITS

Qualifying units shall meet the following standards:

1. Standards for Design and Construction of Qualifying Units
 - A. Qualifying units must be constructed concurrently with the other units in a residential development. Where the phasing of construction is necessary, each phase shall provide the required ratio of qualifying units to unrestricted units to insure that the qualifying units are made available for sale or rent at the same time as other units in the development.
 - B. Qualifying units shall be integrated into the overall design and distributed throughout the development. The units will be of the same size and quality and shall have the same amenities as the unrestricted units and their interior and exterior materials and appointments shall be the same as the unrestricted units in the development.
 - C. The mix of unit sizes and bedroom counts in the qualifying units shall be directly proportional to mix of unit sizes and bedroom counts provided in the development as a whole (i.e., if 20 percent of the unrestricted units are of one size and style, 20 percent of the qualifying units shall be of that size and style).
 - D. The units in projects that were granted a density bonus and incentive or financial incentive shall remain available to the targeted group for 30 years. Units that received only a density bonus shall remain available to the targeted group for a minimum of 10 years. If Belmont Redevelopment Agency assistance is used then additional standards of affordability duration as are required by the Belmont Redevelopment Agency shall be met.

2. Qualifying units are to be sold or rented only to households certified by the Director of Planning as lower or very low income, senior, or disabled households, as defined in Section 26.2(c,f,e,j).

3. Specific Standards for Ownership of Qualifying Units

- A. Price Levels

Ownership qualifying units shall be offered at sales prices that are affordable to very low, or lower income households, as identified in Section 26.4(f,j) herein.

- B. Buyer Certification and Selection

Qualifying units are to be sold to households certified by the Director of Planning. Buyers eligible to purchase qualifying units will be selected by the developer in accordance with a marketing program approved, in advance, by the Director of Planning and Community Development. The marketing program shall set forth an equitable selection process to be used for the marketing of the affordable units established in conformance with this Chapter. Selection criteria may include, but not be limited to, household income and assets, household size, and the size of available units.

4. Guarantee of Continued Affordability/Resale Controls

In order to maintain the availability of the qualifying units constructed pursuant to the requirements of this Chapter resale of qualifying units shall be governed by the following:

- A. Resale Price

The resale price paid by the original qualifying purchaser and each subsequent purchaser of an ownership qualifying unit shall be limited to the lesser of:

1. The original purchase price plus an amount, if any, equal to the original price multiplied by the percentage increase, from the time of the initial conveyance from the Developer to the Owner until the time of sale, in the median household income for San Mateo County, as published periodically by the United State Department of Housing and Urban Development and State Department of Housing and Community Development, minus any costs necessary to bring the unit into conformity with the City Building Regulations in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance. The adjusted price shall be increased by the cost of any capital improvements greater than one percent of the original purchase price; or

2. The appraised fair market value.

B. Deed Restrictions

Deed restrictions, recorded as part of the grant deed to the first eligible home buyer, shall contain provisions which will provide the City with a first right to either purchase the unit at the resale price calculated pursuant to this section or assign the City's first right to an eligible buyer. It shall also contain language that, in the event that the City declines to exercise its first right to purchase, requires the seller to sell the unit at the defined resale price to an eligible buyer selected by the seller. The seller shall not be allowed to levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs. The owners of any qualifying unit shall incorporate as a part of the grant deed conveying title of any such unit, the declaration of restrictions, stating the restrictions imposed by this Chapter including, but not limited to, all applicable resale controls and occupancy restrictions. The terms of the restrictions shall specifically assign to the City all of the sellers' rights to enforce the declaration of restrictions in the manner provided by law. The City or its designee shall monitor resales of qualifying units, for purposes of preventing any abuse or violation of sale or resale controls.

5. Specific Standards for Rental Qualifying Units

A. Rent Levels

Rental qualifying units shall be offered at rent levels that are considered affordable to very low, lower, or moderate income households as identified in Section 26.4 (f,j).

B. Tenant Certification and Selection

Rental qualifying units are to be rented to households certified by the Director of Planning under Section 26.7.2 of this Ordinance. Owners of rental qualifying units must make available to the authorized staff of the City adequate records in order to prove that all tenants occupying the designated affordable rental units are eligible under the terms of this ordinance and the specific agreement implementing the affordability and occupancy requirements executed by the City and the developer at the time of construction of the units. The agreement shall provide for a fair and equitable tenant selection process to insure the selection of eligible tenants. Selection criteria may include, but not be limited to, amount of household income and assets, household size, and the size of available units. In addition, priority may be given, first, to current residents of Belmont, and second, to persons employed in Belmont.

C. Guarantee of Continue Affordability

A developer of rental qualifying units required by this Chapter shall be required to enter into an agreement with the City which shall guarantee the continued affordability of such units through a recorded agreement with the City. The agreement shall be recorded when construction of the units commences. The agreement shall state that the developer agrees, and binds any successors, to maintain the units as affordable housing as described in Section 26.7.1.D. of this Ordinance from the recordation of the Notice of Completion of the units.

26.8. LOCATION OF DENSITY BONUS UNITS

Density bonus units shall be distributed throughout the residential development from which they were generated. If the residential development consists of a group of projects being developed simultaneously, the density bonus units shall be distributed throughout the development unless some other arrangement is approved in advanced by the City or its designated representative.

26.9. PROCEDURE FOR REVIEWING AND GRANTS OF DENSITY BONUS AND INCENTIVE

1. Application

- A. The application process shall be initiated by submission of a density bonus request by the developer. The request shall be accompanied by a preliminary design review application indicating the proposed number and type of qualifying units, and which type of incentive, of those listed in Section 26.5.2, is being requested.
- B. An application that requests a developer incentive in addition to a density bonus shall include a site specific factual statement as to how providing the qualifying units would be impossible without approval of the requested developer incentive. When the additional developer incentive being requested is based upon financial rather than physical site development constraints the applicant shall include a pro-forma analysis with documented land and construction costs verifying the need for the additional incentive.

2. Findings Required

- A. Review and findings for a Density Bonus or a Density Bonus and Site Development Incentive.

The City Council shall review a developer's request for a Density Bonus or a Density Bonus and Site Development Incentive. Council shall make one of the following findings:

- (1) That the request is appropriate and consistent with the purpose of this ordinance, Section 26.2, and the site development incentive would not be injurious to the public health, safety, or welfare; or

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- (2) That an additional development incentive is not necessary to provide housing in the targeted house group; or
- (3) That a density bonus is not suitable for the site and that upon recommendation by the Finance Commission an in-lieu financial incentive be provided the developer in lieu of a density bonus. Said findings shall stipulate the amount of in-lieu financial incentive.

B. Review and findings for a Density Bonus and Financial Incentive

The Finance Commission shall review the project pro-forms and make a recommendation to the City Council on the need for a financial incentive. Council shall then review the request and Finance Commission recommendation and make one of the following findings:

- (1) That the need for the requested additional developer incentive has been demonstrated as necessary in order to provide housing for the targeted group, as defined in Section 26.5.1; or,
- (2) That the need for the requested additional developer incentive has not been demonstrated as necessary in order to provide housing for the targeted group, as defined in Section 26.5.1.

3. Issuance of Report

Upon Council direction and within 90 days of submittal of a complete application, the Planning Division shall issue a written report to the developer. The report to the developer will contain a confirmation of the maximum density of development allowed by the current zoning applicable to the subject site, the number of density bonus units permitted, if any, and whether an additional or in lieu incentive is offered by the City pending formal approval by the Planning Commission and/or City Council of the required development entitlements. The written report will also describe the process to which the developer shall comply (i.e., environmental review and any additional discretionary permit approvals).

4. Effective Date of Density Bonus/Incentive/of Financial Incentive

- A. The density bonus or the density bonus and incentive shall become effective upon City approval of the other required development entitlements and in conjunction with item 'B', below. A project is entitled to only one density bonus or one density bonus and incentive; and
- B. Upon formal approval of the project, the developer shall enter into a written and recorded agreement with the City specifying the manner of compliance with this Chapter. At a minimum, the agreement shall specify that the development meets the requirements of Section 26.7 of this Ordinance. Any expiration date of the density bonus, density bonus and

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additional developer incentive or in-lieu financial incentive shall be stipulated with said agreement.

5. Agreement

Prior to issuance of building permits for a project with an approved density bonus, the applicant shall enter into an agreement, which shall run with the property and be binding on successors and assigns, to provide the qualifying units pursuant to the requirements of this ordinance, to the qualifying households for which such units were approved, for the stipulated amount of time and rent or resale cost and to provide for the City to recapture the costs of drafting, executing the agreement, and monitoring the agreement. The agreement shall be subject to the review and approval of the City Attorney and at a minimum shall contain the requirement that review of the deed to the property, including restrictions for the targeted housing requirements, be reviewed and approved by the City prior to any and all sale(s) of said property to insure compliance with State law and this Ordinance.

6. Bonding

The developer of a project containing qualifying units shall post a bond in an amount determined necessary by the approving body to insure the construction of all qualifying units and performance of the agreement requ